

HONORABLE BARBARA J. ROTHSTEIN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

ROBERT F. KENNEDY, JR., a citizen of
New York, JOSEPH MERCOLA, M.D., a
citizen of Florida, RONALD CUMMINS, a
citizen of Minnesota, and CHELSEA
GREEN PUBLISHING, INC., a Vermont
Corporation,

Plaintiffs,

v.

U.S. Senator ELIZABETH WARREN,

Defendant.

No. 21-cv-01508-BJR

UNOPPOSED MOTION FOR
LEAVE TO FILE SEPARATE
RULE 12 MOTIONS

Plaintiffs have brought First Amendment claims against Defendant Senator Elizabeth Warren (“Senator Warren”) in both her official and individual capacity. As is the typical practice in such a case, Senator Warren is separately represented by the U.S. Department of Justice as to Plaintiffs’ official-capacity claims and by the undersigned counsel at Elias Law Group LLP as to Plaintiffs’ individual-capacity claims. The claims against the Senator in her official and individual capacity differ, and as a result, so do some of the arguments available to the Senator on a motion to dismiss. Senator Warren files this motion in her individual capacity to request leave to file a separate Fed. R. Civ. P. 12(b) motion to dismiss and accompanying brief not to exceed 15 pages

MOTION FOR LEAVE TO
FILE SEPARATE BRIEFS
(NO. 21-CV-01508-BJR) - 1

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as set forth in the Court's Standing Order.¹ Counsel representing Senator Warren in her official capacity and counsel for Plaintiffs do not oppose this request.

In this Court previously and in the Ninth Circuit, official and individual capacity counsel have filed separate briefs and request leave to do so again to present several distinct arguments unique to Plaintiffs' official-capacity and individual-capacity claims.

Relatedly, counsel seeks the Court's guidance as to a briefing schedule for these renewed motions. The Court struck the then-pending dispositive motions with leave to refile after the resolution of Plaintiffs' appeal. ECF No. 54. Accordingly, there are not currently deadlines set by rule for the refiling of these motions, and Senator Warren requests clarity on when this Court would like renewed motions submitted.

Dated: July 14, 2023

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By /s/ William Stafford

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¹ On May 8, 2023, the Ninth Circuit issued its opinion affirming the denial of Plaintiffs' motion for preliminary injunction. ECF No. 55. On June 26, 2023, the Ninth Circuit has issued its mandate, and the Court again has jurisdiction.

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CERTIFICATE OF SERVICE

I, William B. Stafford, certify under penalty of perjury that on July 14, 2023, a copy of the foregoing was sent via the Court's electronic filing system to the following:

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